UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 9

In the Matter of

RENAL TREATMENT CENTERS ILLINOIS, INC.,
A SUBSIDIARY OF TOTAL RENAL CARE HOLDING, INC. [1]/

Employer

and Case 9-RC-17326

UNITED FOOD AND COMMERCIAL WORKERS
INTERNATIONAL UNION, LOCAL 1099, AFL-CIO-CLC

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, [2]/ the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

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[1]/ The name of the Employer appears as amended at the hearing.

[2]/ The Employer and the Petitioner timely filed briefs which I have carefully considered in reaching my decision.

5. The Employer, a corporation, is engaged in the operation of renal care facilities at several locations throughout the United States, including a kidney dialysis center at Cincinnati, Ohio where it currently employs approximately 18 employees in the unit found appropriate. There is no history of collective-bargaining affecting any of the employees involved in this proceeding. I find that the Employer is a health care employer within the meaning of Section 2(14) of the Act.

The Petitioner seeks to represent a unit comprised of all licensed practical nurses (LPNs), patient care technicians and reuse technicians employed by the Employer at its Cincinnati, Ohio facility, excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act. Although the Employer agrees that the employees sought by the Petitioner should be included in any unit found appropriate, it maintains, contrary to Petitioner, that the composition of the unit should be expanded to include biomedical technicians, dieticians, social workers and secretaries. In addition, the Employer contends that the scope of the unit should be expanded to include its Lawrenceburg (40 miles from Cincinnati), Batesville (70 miles from Cincinnati) and Madison (95 miles from Cincinnati) facilities, herein collectively referred to as the Indiana facilities.

All employees, except for the biomedical technician, at each of the four facilities is directly supervised by a facility administrator who has overall supervisory responsibility for the entire facility and is the highest ranking Employer official on site. The facility administrators at the four facilities all report directly to Diane French, the Employer's Regional Director. Although the record does not reflect the location of French's office, it appears that she works in Michigan. In addition to the four facilities, French has general supervisory authority over 15 facilities in Michigan, 2 in Kentucky and 2 in Northern Ohio.

Each of the four facilities performs kidney dialysis. The Cincinnati facility employs 11 patient care technicians, 3 LPNs, a reuse technician, a secretary, a secretary/reuse technician, a social worker, 2 dieticians, a biomedical technician and 5 RNs who serve as charge nurses. The Lawrenceburg facility employs a LPN, 2 patient care technicians and a dietician. The Batesville facility employs a social worker, a patient care technician, a secretary and 4 LPNs. The Madison facility employs 2 patient care technicians, a LPN, a dietician and a social worker. The record reflects that the Employer also employs RNs at its Indiana facilities, but the record is not clear as to their number or specific work locations. It appears that the Employer has a registered nurse present at any facility where patients are undergoing dialysis.

The evidence establishes that job descriptions, the general wage policy and employee benefits such as insurance, holidays, overtime, leaves of absence, retirement, bereavement, jury duty and educational assistance are determined at the corporate level [3]/ and are identical across the four facilities. Payroll functions are performed at the corporate level and the four facilities are in the same payroll system. French testified that the facility administrators at each of the four facilities perform first line human resources functions with backup from French. Thus, the

[3]/ The corporate level refers to Diane French and her superiors.

record shows that the facility administrators independently hire, discharge, discipline, evaluate and schedule employees at their respective facilities. Facility administrators also perform annual evaluations on employees at their facility and use these evaluations to independently determine the amount of merit wage increases employees will receive within parameters determined at the corporate level. The evaluations are not forwarded to or reviewed by anyone at the corporate level, but the amount of the wage increase is forwarded for payroll purposes.

The patient care area at the Cincinnati facility consists of a large room which contains several dialysis machines. The RN charge nurse, LPNs and patient care technicians perform their primary work in this patient care area. The RN charge nurse is responsible for overseeing and directing all patient care. The LPNs and patient care technicians set up the dialysis machines, bring the patients to the machines, prepare the patient to receive treatment, monitor the patient during treatment and clean the dialysis machine upon the completion of the treatment. The functions of the LPNs and the patient care technicians with respect to the administration of dialysis are almost identical. LPNs may administer medications to patients under the direction of the RN, while the patient care technicians do not perform this function. The working hours of these employees are scheduled by the facility administrator. The wage range for RNs is $16.00 to $23.00 per hour; for LPNs $12.25 to $17.25 per hour; and for patient care technicians $9.75 to $15.00 per hour. The reuse technicians, at Cincinnati, work primarily in the reuse room. They are responsible for cleaning the dialyser, a removable component of the dialysis machine which serves as the blood filter, after each treatment. The wage range for reuse technicians is $6.00 to $9.00 per hour.

David Cortner, the biomedical technician at Cincinnati, is directly supervised by Fred Steffan who is either a division biomedical administrator or an area biomedical coordinator in Michigan. Although Kathy Garrison, the Cincinnati facility administrator, testified that Cortner reports to her on some matters and to Steffan on others, the only specific record testimony in this regard was that Cortner would go to Steffan to request time off or schedule vacation. The job description for biomedical technician reflects that the incumbent reports directly to a division biomedical administrator or an area biomedical coordinator. The biomedical technician at Cincinnati is responsible for maintaining and repairing all of the dialysis equipment in the four facilities, sets his own work schedule and has his own office in order to accomplish that objective. Cortner works 3 days per week at the Cincinnati facility and the remainder of his time at the Indiana facilities on an as needed basis. He is also responsible for training reuse technicians. The wage range for biomedical technician is $14.50 to $19.00.

Barbara O'Brien is the secretary at Cincinnati. She has her own office and is responsible for typing, filing and other clerical duties as assigned by the facility administrator, completing charge sheets, talking to employees about paperwork errors, working with flow sheets, doing insurance verifications, arranging for patient transportation, completing new patient admission charts, insuring that medical records are current and properly filed, answering the telephone, taking messages and completing requisition forms for office supplies. The wage range for secretary is $9.00 to $12.50. At this time, Melanie Smith is scheduled to work as a reuse technician for 18 hours per week with the remainder of her time scheduled as a secretary. The parties agree that Smith, whom the record discloses is a dual function employee, should be

included in any unit found appropriate. The Petitioner, contrary to the Employer, would exclude O'Brien from the unit.

The Employer's job description for social worker indicates that the incumbent should preferably have a masters degree in social work, possess a state license in clinical social work, have at least 2 years experience as a social worker in a health care setting, possess strong interviewing skills for patient evaluation and problem solving and be capable of communicating clearly and effectively with all types of physically and mentally disabled patients and their families. The job description reflects that social workers counsel new patients and their families and conduct initial psychological assessment for receiving health care; provide support, information and assistance in treatment planning; develop treatment goals for initial short and long term care plans; act as patient and family advocate; provide ongoing written assessments and monitoring of patient goals; facilitate education and support groups; coordinate and participate in patient/family care conferences with medical team; provide referrals to outside agencies based on psychological need and furnish crisis intervention expertise. Record testimony reflects that the job description accurately describes the qualifications and job functions of the social worker. The record discloses that all of the Employer's social workers must possess a bachelor's degree and that the social worker at Cincinnati, Susan Haumesser, has a bachelors in social work with a masters in religion. Due to governmental and accreditation agency regulations, the Employer utilizes the services of an off-site consultant with a masters degree in social work to provide oversight for Haumesser. Haumesser handles insurance matters and orientation for new patients, meets with patients about their problems, arranges patient transportation, assists patients in obtaining financial resources to continue treatment and medication, educates patients concerning their condition and counsels patients concerning their code of conduct while receiving treatment at the facility as well as the importance of maintaining treatments and medications. Haumesser has her own office and sets her own hours. She works about 28 hours per week in Cincinnati and about 8 hours per week in Lawrenceburg. The wage range for social worker is $18.00 to $23.00.

The Employer's job description for its dieticians reflects that they are required to possess a bachelors degree in nutrition/dietetics or a similar area; possess registered dietician status with the American Dietetic Association or a state license in the practice of nutrition; and 1 year experience in dietetics or nutrition. According to their job descriptions, the dieticians are expected to assess nutritional status of patients to determine appropriate nutrition intervention; review medical histories and consult with medical staff and patients to document appropriate information on medical records; provide nutritional education and counseling based on individualized patient needs; select or develop educational materials and methods appropriate for individual patients; monitor nutritional status, laboratory values, dialysis kinetics and adherence and response to diet to evaluate outcomes and identify factors that may contribute to undesirable results; revise and update nutritional recommendations as needed and contact and collaborate with family, long-term care medical staff and other medical personnel to facilitate provision of and compliance with recommended diet. Record testimony reflects that the dietician's job description accurately describes the qualifications and job functions of the Employer's dieticians. At the Cincinnati facility, both dieticians have bachelors degrees in nutrition, are registered dieticians with the American Dietetics Association, have their own offices and set their own hours of work. The record discloses that the Cincinnati dieticians see every patient on a periodic

basis for purposes of diet counseling based on monitoring of their medications and lab reports so that the patients may be educated as to what they should be eating, what not to eat and any dietary supplements which may be required. The wage range for dieticians is $18.00 to $23.00. Prior to her Summer 1999 pregnancy leave, Julia Spitzfaden, a dietician at Cincinnati, worked about 28 hours per week at Cincinnati and about 8 hours per week in Lawrenceburg. However, upon her return from leave in late August 1999, Spitzfaden decided that she wanted to reduce her hours, so she discontinued her work at Lawrenceburg and another dietician was hired at that facility.

Peggy Heckman, a registered nurse (RN), works about 28 or 30 hours per week at the Lawrenceburg facility and about 18 or 20 hours per month at the Cincinnati facility. The arrangements for Heckman to work at Cincinnati were made at her request because the Lawrenceburg facility was unable to use her on a full-time basis and she requested additional hours.

Lisa Paul, a secretary, divides her time among the Indiana facilities, but in accordance with a decision made at an administration meeting on October 19, 1999, she will soon begin to spend about 6 to 8 hours per month at Cincinnati setting up a computer program for the purpose of transmitting monthly data. It has not yet been decided whether Paul, upon her completion of the program to set up the data entry, will actually work at Cincinnati to perform the monthly data entry. The record reflects that Paul volunteered to work at Cincinnati to set up the computer program because she desired more hours of work than were available to her at the Indiana facilities.

Andrianne Burton is an LPN who currently works at all three of the Indiana facilities and formerly worked, several years ago, at the Cincinnati facility. About 3 or 4 months prior to the hearing, Burton requested permission to work at Cincinnati so that she could obtain additional hours. During the week of November 22, 1999, Kathy Garrison, the facility administrator at Cincinnati, contacted Burton and scheduled her to work at Cincinnati on November 30 and December 1 for orientation. Burton has not been scheduled for any further work at Cincinnati in 1999. Garrison informed Burton that she would be called to work at Cincinnati on an as needed basis.

Because the Indiana employees are not scheduled for as many hours of work as those in Cincinnati, they sometimes request to be assigned to facilities in addition to their own so that they may obtain additional hours. In the event that the Cincinnati facility were short staffed due to employee illness or scheduled time off, the Employer would first attempt to cover the vacancy with per diem (casual) employees and would then request that full-time and part-time employees at that facility work extra hours. In the event that these measures fail to fill the vacancy, the Employer might ask employees from the Indiana facilities to cover, but the record reflects that this situation has never actually occurred.

The evidence shows that there has been no permanent or temporary interchange of patient care technicians or reuse technicians among the four facilities. The record reflects that in the event of a major power or equipment failure at either Cincinnati or Lawrenceburg, the other

facility would serve as a backup with a combined staff from both facilities. However, the record does not indicate whether this has ever actually happened.

ANALYSIS:

Section 9(a) of the Act only requires that a unit sought by a petitioning labor organization be an appropriate unit for purposes of collective bargaining and there is nothing in the statute which requires that the unit for bargaining be the only appropriate unit, or the ultimate unit or even the most appropriate unit. *Morand Bros. Beverage Co*., 91 NLRB 409, 418 (1950). Moreover, the unit sought by the petitioning labor organization is always a relevant consideration and a union is not required to seek representation in the most comprehensive grouping of employees unless an appropriate unit compatible to that requested does not exist. *Overnite Transportation Co.*, 322 NLRB No. 122 (1996); *The Lundy Packing Co.*, 314 NLRB 1042, 1043 (1994); *Purity Food Stores*, 160 NLRB 651 (1966). Although other combinations of the Employer's employees may also be appropriate for collective bargaining, I need only determine whether the employees sought by the Petitioner constitute an appropriate unit.

UNIT COMPOSITION:

Social Workers and Dieticians:

The Petitioner, contrary to the Employer, would exclude the social workers and dieticians from the unit. Although the Employer contends on brief that these employees are not professionals, the evidence reveals that they are, in fact, professional employees within the meaning of Section 2(12) of the Act. [4]/ A professional employee is defined in Section 2(12) as:

> (a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in field of science or learning customarily acquired by prolonged course of specialized intellectual instruction and study in an institution of higher learning or hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; (b) any employee, who (i) has completed the courses of specialized intellectual

[4]/ The Petitioner, on brief, contends that the social workers and dieticians should be excluded on the basis that they are technical employees. Although neither party contends that these individuals are professional employees, record evidence indicates their professional status and I am, therefore, required to determine whether they are professional employees. *Pontiac Osteopathic Hospital*, 327 NLRB No. 194 (1999).

> instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

Employees must satisfy each of the four criteria set forth in the above section to qualify as professional employees within its definition. *Greenhorne & O'Mara, Inc.*, 326 NLRB No. 57, slip. op. p. 4 (1998).

The evidence shows that the Employer's social workers and dieticians are all required to and do, in fact, possess specialized degrees in their field which they obtained through prolonged courses of intellectual instruction at institutions of higher learning and that their work requires the use of their educational studies. The fact that both the dieticians and social workers are required to use their knowledge to obtain information from and counsel patients and families and to make recommendations to other medical care givers as to the nutritional or psychological needs of patients, establishes that their work is predominantly intellectual and requires the consistent exercise of discretion and judgment. The record further reflects that the work of the dieticians and social workers cannot be standardized in relation to a given period of time. Accordingly, I find that the dieticians and social workers are professional employees within the meaning of Section 2(12) of the Act. *The Mason Clinic*, 221 NLRB 374, 376 (1975); *Catholic Bishop of Chicago*, 235 NLRB 776, 780 (1978). Accordingly, I shall exclude them from the unit.

Moreover, I have concluded that the cases cited by the Employer on brief are distinguishable. Thus, *Lakeshore Manor, Inc.*, 225 NLRB 908, 909 (1976) involved vocational counselors rather than social workers and the vocational counselors' work was not predominantly intellectual and did not require use of prolonged specialized education or the consistent exercise of discretion and judgment. In *Southern Maryland Hospital*, 274 NLRB 1470, 1475 (1980) the issue presented was whether mental health counselors who assisted professionals in carrying out treatment plans were technical or service and maintenance employees. The Employer also incorrectly relies on *Samaritan Health Services, Inc*., 238 NLRB 629, 640 (1978) for the proposition that a masters degree is required before a social worker will be deemed a professional employee. In that case, the social worker assistants in issue all possessed bachelors degrees but not necessarily in social work. Their work was found to be routine as opposed to intellectual. The Board noted that the employer required the social worker assistants to obtain masters degrees before advancing to the position of social worker, like the social workers in issue here, which the parties had stipulated was a professional position. A stipulation by the parties does not, however, create Board policy or precedent. I note that in *Catholic Bishop*, supra, social workers who possessed only bachelors degrees were found to be professionals. In *Child and Family Services of Springfield, Inc*., 1270 NLRB 37 (1975), the Board found that social workers with masters degrees were professional employees while the social work associates, who possessed bachelors degrees not in social work and assisted the social workers under their close supervision, were not professionals.

The mental health workers in *Community Health Services, Inc*., 259 NLRB 362 (1981) who were not required to have advanced education in a work related field performed observation and

reporting functions but did not render treatment. The dietetic technicians in *Samaritan Health Systems*, supra, assisted dieticians and their work was not intellectual in nature.

Thus, unlike the factual situations in cases cited by the Employer, the Employer's social workers and dieticians are the employees who are primarily responsible for providing social and nutritional services to patients, rather than assisting other professionals in those endeavors, as was the situation in the cases relied upon by the Employer.

The Employer further contends on brief, that even if the social workers and dieticians are found to be professional employees, they should nevertheless be included in the unit because their exclusion would create an impractical small unit of professional employees. Given the structures of Section 9(b)(1) of the Act which provides that professional employees may not be included in a unit with nonprofessionals unless they vote in favor of such inclusion, and inasmuch as the Petitioner is not seeking to represent the professional employees, it is clear that the Employer's argument that professionals should be included in the unit found appropriate is without merit. Thus, a professional self-determination election under *Sonotone Corp*., 90 NLRB 1236 (1950) might well result in separate units of professional and nonprofessional employees. Therefore, the question as to whether the nonprofessional unit is appropriate cannot possibly be affected by the potential creation of a small unit of professional employees.

Biomedical Technician:

There are certain factors, as argued by the Petitioner, which militates towards exclusion of the biomedical technician from the unit. For example, the biomedical technician has separate supervision, has his own office and essentially establishes his own schedule. However, there is no contention or record evidence that he is a professional employee. Moreover, the biomedical technician shares the same work location and fringe benefit package with the other employees in the unit found appropriate. The record shows that the four facilities have only one biomedical technician among them but does not disclose whether the Employer employs other biomedical technicians or, if so, where they might work. The exclusion of the single biomedical technician from the unit might well result in the creation of a residual unit of only one employee with no community of interest with other unrepresented employees, effectively denying him the opportunity for representation, a result inconsistent with the purposes and policies of the Act. *MDS Courier Service, Inc.*, 242 NLRB 405 (1979); *Vecellio & Grogan*, 231 NLRB 136 (1977); *Victor Industries Corporation*, 215 NLRB 48 (1974). Accordingly, in agreement with the Employer, I shall include the biomedical technician in the unit.

Secretaries:

In determining appropriate units in nonacute health care institutions, the Board utilizes an empirical community-of-interest test which considers community-of-interest factors as well as factors considered relevant by the Board in its rule making proceedings on collective-bargaining units in the health care industry set forth at 284 NLRB 1528 (1988) and 284 NLRB 1580 (1989). *Park Manor Care Center*, 305 NLRB 872 (1991). With respect to clerical employees, the Board examines factors similar to those it relies on in determining, in an acute care setting, whether clericals are business office clericals which should be excluded from a unit of other non-

professional employees or hospital clericals which should be included therein. *Lifeline Mobile Medics, Inc.*, 308 NLRB 1068 (1992); *CGE Caresystems, Inc.*, 328 NLRB No. 103 (1999). In the instant matter, Barbara O'Brien, the secretary at the Cincinnati facility, completes charge sheets, performs insurance verifications and completes requisition forms for office supplies which are functions normally associated with business office clericals in an acute care setting. However, O'Brien also works with other employees in the unit regarding completion of paperwork concerning patient health care, a function normally associated with hospital clericals in the acute care setting. O'Brien and the other employees in the unit work in close proximity, have frequent job related contact and share identical supervision which are all factors which strengthen her community-of-interest with the other nonprofessional employees and would favor her inclusion in the unit. Some of the employer's secretaries have become technicians and Melanie Smith, whom the parties agree is appropriately included in the unit, also works a portion of her hours as a secretary. In view of the foregoing, I conclude that O'Brien shares such a community of interest with the other unit employees to require her inclusion in the unit. *Lifeline Mobile*, supra. Accordingly, in agreement with the Employer, I shall include O'Brien, the secretary, in the unit.

UNIT SCOPE:

In *J & L Plate, Inc.*, 310 NLRB 429 (1993), the Board, citing *Esco Corp.*, 298 NLRB 837, 839 (1990), found that it was well established that a single facility unit is presumptively appropriate unless the employees at such facility have been merged into a more comprehensive unit by bargaining history or else have been so integrated with employees in another location to cause the single facility to lose its separate identity. In *J & L Plate*, the Board held that the party challenging the appropriateness of a single facility unit has the burden of rebutting the presumption. In determining whether the presumption has been rebutted, the Board examines the collective-bargaining history; control over daily operations and labor relations, including the extent of local autonomy; similarity of employees' skills, functions and working conditions; degree of employee interchange and distance between the various locations. See also, *AVI Foodsystems, Inc.*, 328 NLRB No. 59, slip. op. p. 4 (1999); *First Security Services Corp.*, 329 NLRB No. 25 (1999).

There is no history of collective bargaining among the employees at the four facilities. The nearly identical nature of the employees' skills, functions and working conditions at the four facilities would militate in favor of finding that the presumption favoring an appropriate single facility unit has been rebutted. However, the geographic separation of the facilities, the high degree of local autonomy exercised over daily operations and labor relations and the lack of significant interchange among unit employees lead me to find that the Employer has failed to meet its burden to rebut the presumption that a single facility unit is appropriate here.

The nearest of the Indiana facilities to the Cincinnati facility is 40 miles distant while the furthest is 95 miles from the Cincinnati location. Thus, in accordance with *First Security*, supra, and *Foodland of Ravenswood*, 323 NLRB 665, 667 (1997) where distances of 28 miles and 25 miles, respectively, were found to constitute significant geographic separation, I conclude that

the geographic separation of the four facilities here serves to strengthen the presumption favoring a single facility unit. [5]/

The record shows that the Employer's facility administrators retain significant local autonomy over such day-to-day operations and labor relations as the hire, discharge, discipline, evaluation and scheduling of employees at their respective facilities and that they exercise independent discretion to determine, within parameters, the amount of employee merit wage increases. I am mindful that the Employer determines many of its fringe benefit programs and human resource policies at its corporate level and applies those programs and policies uniformly across all facilities. However, the fact that local autonomy is exercised by the local facility administrator over important labor relations matters such as hiring, firing, discipline and other matters, serves to strengthen the presumption in favor of a single facility unit. See, *First Security*, supra., where the Board found significant local autonomy in circumstances where decisions as to pay, promotions, wages, hiring, discharge and discipline were made on a multi-facility basis at or above the district level while day-to-day supervision, post assignments, overtime decisions, the release of sick employees and preparation of evaluations was reserved to the local single facility level.

Regarding employee interchange, the record reflects that some employees spend a portion of their work week at one of the four facilities other than their home facility. However, the evidence regarding such interchange among and limited to the Indiana facilities is of little probative value in determining whether the single facility unit sought by the Petitioner is appropriate. *D&L Transportation*, 324 NLRB 160 (1997). Similarly, the fact that Lisa Heckman, Susan Haumesser and Julia Spitzfadden currently or previously worked at the Cincinnati facility and one of the Indiana facilities is of little probative value because such interchange involves non-unit
employees. [6]/ Lisa Paul, a secretary, and Andrianne Burton, an LPN, also worked among the three Indiana facilities prior to the hearing in this matter. The record reflects that subsequent to the hearing, they will be working at the Cincinnati facility with Paul working on a special computer program of limited duration and Burton being assigned to Cincinnati on an as needed basis for an uncertain amount of hours. The record shows that both Paul and Burton volunteered to work at Cincinnati in addition to their regular assignments at the Indiana facilities in order to obtain additional hours of employment. In such circumstances, where the interchange is voluntary and is for the purpose of supplementing the employee's hours, the interchange is of reduced significance in determining the propriety of a single facility unit. *AVI Foodsystems*, supra.; *First Security*, supra. at fn. 5. As noted above, David Cortner, the biomedical technician and a unit employee, spends 3 days per week at the Cincinnati facility and the remainder of his time at the Indiana facilities because the Employer's operational requirements necessitate such interchange. However, such interchange necessitated by the Employer's operational needs is

[5]/ I note that, contrary to the Employer's assertions on brief, Batesville and Madison, Indiana are not in the Cincinnati metropolitan area.

[6]/ The Employer incorrectly relies on *West Jersey Health Systems*, 293 NLRB 749, 751 (1989) in asserting that interchange among nonunit employees is a significant consideration. In that case, there was evidence of interchange among nonunit employees but the Board also emphasized and relied on the substantial interchange in unit classifications. Moreover, the high degree of local autonomy in the instant matter was not present in *West Jersey*.

insignificant in light of the lack of any interchange involving patient care technicians and reuse technicians at Cincinnati. *J & L Plate*, supra. at 430; *First Security*, supra. slip. op. p. 2.

The degree of local autonomy exercised over day-to-day working conditions is the most significant consideration in determining whether a single facility unit is appropriate. *AVI Systems*, supra., slip. op. p. 5; *Purity Supreme, Inc.*, 197 NLRB 915 (1972). In view of the high degree of local autonomy exercised by the Employer's facility administrators regarding important aspects of the employees' terms and conditions of employment and the high degree of geographic separation between the Cincinnati facility and the Indiana facilities; I conclude that the nearly identical nature of the employees' skills, functions and working conditions at the four facilities and the limited amount of employee interchange between the facilities are not sufficient to overcome the presumption that a single facility unit is appropriate. Accordingly, I find that a unit limited to the employees at the Employer's Cincinnati, Ohio facility is appropriate for purposes of collective bargaining.

In addition, I note that this case arises in the Sixth Circuit. Even though the Employer has not cited the following case, I note that the Sixth Circuit has suggested that a single facility presumption may not be appropriate in the health care industry. *NLRB v. McAuley Health Center*, 885 F.2d 341 (6th Cir. 1989). With due difference to the Sixth Circuit, I am obligated to follow Board precedent when it differs from that of the Court of Appeals. In this case, however, even accepting the suggestion by the Sixth Circuit that a single facility presumption may not be appropriate in the health care industry, I would nevertheless find that the single facility here constitutes an appropriate unit, particularly noting the degree of local autonomy and geographic separation of the facilities.

The precedents cited by the Employer on brief do not warrant a contrary conclusion. In *Kaiser Foundation Health Plan*, 225 NLRB 409, 410 (1976) and *Baptist Memorial Hospital*, 224 NLRB 201, 202 (1976), the Board did not address the presumption favoring a single facility unit. Moreover, in *Baptist*, the Board found massive interchange, a factor not present in the case at bar. In *Mercy Health Services*, 311 NLRB 367, 368 (1993), the employees at both of the facilities in the combined appropriate unit had identical supervision and were, therefore, not locally autonomous as are the facilities here. Similarly, in *Napa Columbus Parts Co*., 269 NLRB 1052 (1984), the absence of local autonomy and a high degree of interchange led to a finding that a single facility was not appropriate. *Pic-Way Shoe Mart*, 274 NLRB 902, where the Board found a seven store unit to be inappropriate because it did not include all stores within the employer's administrative district, did not raise any issue as to whether a single facility unit was appropriate. *Kansas City Coors*, 271 NLRB 1388 (1984) involved the consolidation of operations of two of the employers' subsidiaries under a single roof performing identical work. The situation in *V.I.M. Jeans*, 271 NLRB 1408 (1984) involved a significantly lesser degree of local autonomy and closer geographic proximity than present here. In *NLRB v. Carson Cable TV*, 795 F.2d 879 (USCA 9 1986), the petitioner sought a multi-facility unit, so the issue as to the presumption favoring a single facility unit did not arise.

Based on the foregoing, the record as a whole and careful consideration of the arguments of the parties at the hearing and in the briefs, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining:

All nonprofessional employees employed by the Employer at its Cincinnati, Ohio facility, excluding all professional employees, guards and supervisors as defined in the Act.

Accordingly, I shall direct an election among the employees in such unit.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **United Food and Commercial Workers International Union,**
Local 1099, AFL-CIO-CLC.

LIST OF ELIGIBLE VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters using full names, not initials, and their addresses which may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB No. 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision **2** copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election subject to the Petitioner's submission of an adequate showing of interest. In order to be timely filed, such list must be received in Region 9, National Labor Relations Board, 3003 John Weld Peck Federal Building, 550 Main Street, Cincinnati, Ohio 45202-3271, on or before **December 17, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 - 14th Street, N.W., Washington, D.C. 20570. This request must be received by the Board in Washington by **December 27, 1999**.

Dated at Cincinnati, Ohio this 10th day of December 1999.

/s/ [Richard L. Ahearn]

Richard L. Ahearn, Regional Director
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